

### **REMARKS**

Applicants have amended claims 1, to further define the invention. The amendments do not add new matter to the application. Support for the amendments may be found on page 3, line 28 and in figures 1-4 of the application.

#### **In the Office Action**

[c]laims 1-7 and 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 6,082,533).

Regarding claim 1, Smith et al. discloses (Figures 5 and 6) a disposable contact lens package (300) with a raised seal volume (310), base (312), top surface (371), perimeter top surface (370), and recessed well (314). Package (300) is sealed with lidstick (Col. 3, ll. 4-9). Smith et al. disclosed raised surface (31) as arcuate in shape to prevent the collection of aqueous fluid on its surface (Col. 3, ll. 9-12). Smith et al. discloses the claimed invention except for two linear sides intersecting the horizontal plane at angles having values from 125 to 170 degrees.

Smith et al. further discloses an alternate embodiment (200) with a linear side (220) having an angle greater than or equal to 90 degrees (Col. 2, ll. 38-42) instead of an arcuate side. Smith et al. shows that linear sides are an equivalent structure known in the art with respect to the movement of fluids from the top surface of a raised volume. Therefore, because these two geometric configurations were art recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute linear sides for arcuate sides.

The applicant fails to argue the assertion presented by the examiner that the arcuate sides of the Smith et al. raised seal volume is a geometric equivalent to the claimed linear sides for the purposes of fluid flow away from the top portion. Applicant argues that Smith et al. teaches a substantially perpendicular argument. As noted by the examiner, Smith et al. discloses, "[I]t is noted that wall 220 does not need to be exactly perpendicular to top surface 160..." (Col. 2, ll. 38-40). The examiner uses the linear sides as a teaching for the shape substitution presented. The fundamental principal of the applicant's invention is the use of geometric shape to direct the flow of fluids away from either side of the peak of the raised seal volume. Smith et al. teaches this principal. The optimization of the shape using elementary geometry to include the linear sides and dimensions claimed by the applicant is within the level of ordinary skill in the art.

Applicants respectfully traverse this rejection for the following reason. Smith does not disclose or suggest that the curved portion of Smith's arcuate raised volumes are equivalent to linear portions with respect to removal of aqueous fluids from the same raised volume.

Smith discloses two embodiments of contact lens packages. In one embodiment, the contact lens package has a raised surface **310** of an arcuate cross-sectional shape. See, Smith col. 2, Ins. 61-63 and Figure 6. This "[r]aised surface **310** is defined by a curved surface **360** and flat surfaces **370**, **371**." See, Smith col. 2, Ins. 63-64, underlining added for emphasis. In the other embodiment, the contact lens package has raised surface **210**, which is "defined by wall **220** that extends substantially perpendicularly from top surface **160** of the base, terminating at edge **240** and curved surface **260**." See, Smith, col. 2, Ins. 36-38. Smith notes that for each of the embodiments "if any aqueous liquid is applied to the curved surface of this raised portion, the solution is less likely to pool on this surface, thereby avoiding a poor seal between the lidstock and this surface." See, Smith col. 3, Ins., 10-13, underlining added for emphasis.

In the Office Action, it was asserted that the linear wall 220 of Smith is equivalent structure known in the art with respect to the movement of fluids from the top surface of a raised volume. However, this is a misreading of Smith. Smith states "that if any aqueous solution is applied to the curved surface of the raised portion, the solution is less likely to pool on this surface, thereby avoiding a poor seal between the lidstock and this surface". See, Smith, col. 3, Ins. 10-13 underlying added for emphasis. Smith does not suggest that fluids run off the linear sides, Smith only teaches that aqueous fluids do not pool on the curved portion of cross sectional arcuate raised portions. Therefore, the art does not suggest that an arcuate side is equivalent to a linear side. This suggestion is found in the words of the Office Action, but not in the teachings of Smith.

In the Office Action, it was asserted that

[a]s to the angles having values from 125 to 170 degrees, Smith et al. discloses linear sides with angles greater than or equal to 90 degrees (encompassing the range of angles from 125 to 170 degrees) and therefore discloses the claimed invention except for expressly disclosing angles from 125 to 170 degrees. It

would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package (Smith et al., 300 with linear sides substituted for arcuate sides) with angles from 125 to 170 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Applicants reject this assertion that the teaching of substantially perpendicular wall would teach someone of ordinary skill in the art to add a linear side having a particular angle to the base.

Even though Smith teaches that wall 220 can have an angle of greater than or equal to 90 degrees, Smith also teaches that "wall 220 that extends substantially perpendicularly from the top surface 160 of the base, termination at the edge 240 of the curved surface 260." See, Smith col. 2, lines 36-38, underlining added for emphasis. Even though Smith indicates that the "wall 220 need not be exactly perpendicular to the top surface," Smith requires that the wall extend substantially perpendicularly. A linear side that has an angle of 125 to 175 degree is not a side that is substantially perpendicular. Therefore Applicants' claimed invention of two linear walls independently having angles of 125 to 170 would not be obvious to one of ordinary skill in the art who is reviewing a teaching that requires a substantially perpendicular wall.

Further, Smith teaches an edge 240 between the curved surface 260 and wall 220. Claim 1 as amended specifically excludes an edge between either one of the two linear sides and the uppermost portion of the cross sectional shape. Applicants submit that the only teaching of Smith is the combination of a substantially perpendicular wall, an edge and a curved surface. This teaching would not suggest to one of ordinary skill in the art a curved surface and a linear side of particular angle.

Therefore in view of the foregoing arguments and reasoning, Applicants respectfully submit that the rejection of claims 1-7 and 10-22 under 35 U.S.C. § 103(a) in view of Smith has been overcome and should be withdrawn.

#### In the Office Action

[a]s to claims 2, 3, 5-7, and 10-17, the package (Smith et al., 300 with linear sides substituted for arcuate sides) as applied to claim 1 above discloses the claimed invention except for the specific dimensions claimed by the applicant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Smith et al. with dimensions as claimed by the applicant, since it has been held

that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

As to claim 4, Smith et al. discloses raised seal volume (31) located 0.2 mm from the perimeter of the well (Col. 2, ll. 66-67).

As to claims 18 and 22, Smith et al. discloses rounded surfaces (260, 360) at the peak of the raised seal volume. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature in the package (Smith et al., 300 with linear sides substituted for arcuate sides) in order to maintain the fluid dispersing properties of the raised seal volume.

As to claims 19-21, the package (Smith et al., 300 with linear sides substituted for arcuate sides) as applied to claims 1, 17 and 18 above discloses the claimed inventions except for the specific radii claimed by the applicant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Smith et al. with radii as claimed by the applicant, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Applicants traverse the forgoing rejections of the claims under 35 U.S.C. §103(a) for the following reason. As described in detail above, since Smith teaches an arcuate surface having a curved surface (360) and two flat surfaces (371, 370) or an arcuate surface having a curved surface (260), an edge (240) and a substantially perpendicular wall (220). An invention that, excludes and edge but requires two linear sides, intersecting the horizontal plane at a particular angle and a cross-sectional shape would not be suggested by a teachings of Smith. Therefore, the particular specific dimensions disclosed by Applicant are not merely discovering the optimum value for a suggested invention. Applicants respectfully request that the rejection of claims 2, 3, 5-7, and 10-17 under 35 U.S.C § 103(a) in view of Smith be withdrawn.

#### In the Office Action

[c]laims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. as applied to claims 1 and 6 above, and further in view of Lust et al. (5,704,468) and Abrams et al. (US 5,467,868).

The package (Smith et al., 300 with linear sides substituted for arcuate sides) as applied to claims 1 and 6 above discloses the claimed inventions except for the specific distances claimed by the applicant. Lust et al. (Figures 4, 8 and 13) and Abrams et al. (Figure 3) disclose that it is known in the art to place the raised seal volume at a distance from the perimeter of the well. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Smith et al. with distances as claimed by the applicant, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).


Lust et al. and Abrams et al. teach the spaced apart raised seal volume, not the linear sides. The examiner interprets the lack of argument on this point as a concession of obviousness.

Applicants traverse this rejection for the following reasons. First, as stated above the claimed invention is not obvious in view of Smith. Second, even though Lust and Abrams teach a raised sealing area, neither Lust nor Abrams suggest two linear sides having an angle of 120 to 175 degrees. Therefore the combination Smith with either or both, Lust and Abrams would not suggest the invention of claims 8 and 9 to one of ordinary skill in the art. This argument was presented in Applicant's response of May 24, 2004. In light of this argument and the arguments presented above, Applicants respectfully request the withdrawal of the rejection of claims 8 and 9 under 35 U.S.C § 103(a) in view of Smith in further view of Lust and Abrams.

Applicants submit that in view of the foregoing arguments, all of the rejected claims stand in condition for allowance. A notice of allowance is respectfully solicited. If the Examiner believes that an interview would expedite the disposition of this case, the Examiner is invited to contact the undersigned agent by telephone.

Respectfully submitted,

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